Valley Fresh Dairy Company, Inc. *and* Teamsters, Chauffeurs, Warehousemen & Helpers Union Local 20, a/w International Brotherhood of Teamsters, AFL–CIO.[1] Case 8–CA–24307

August 10, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge and amended charge filed by the Union, the General Counsel of the National Labor Relations Board issued a complaint on March 19, 1992, against Valley Fresh Dairy Company, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent has failed to file an answer.

On July 13, 1992, the General Counsel filed a Motion for Summary Judgment. On July 15, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Respondent, by letter dated March 24, 1992, informed the Region that although it denied each and every allegation in the complaint, it was without sufficient funds "to conciliate or defend against the complaint." In subsequent correspondence dated July 8, 1992, the Respondent stated that its letter of March 24, 1992, was not intended to be an answer to the complaint.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.[2]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, an Ohio corporation, with an office and place of business in Findlay, Ohio, has been engaged in the processing and wholesale sale of fluid milk and other dairy products. Annually, the Respondent sold and shipped from its Findlay, Ohio facility goods valued in excess of $50,000 directly to points outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Teamsters, Chauffeurs, Warehousemen & Helpers Union Local 20, a/w International Brotherhood of Teamsters, AFL–CIO (the Union) and Teamsters, Chauffeurs, Warehousemen & Helpers Union Local 361, a/w International Brotherhood of Teamsters, AFL–CIO (Local 361) are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Unit and the Union's Representative Status*

The following employees of the Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of the Employer as set forth in Article I, Section I of the collective bargaining agreement, including "Plant Employees" and "Driver Sales Employees" as specified in Article VIII of the collective bargaining agreement, excluding all supervisors as defined in the Act.

Since about August 24, 1990, Local 361 has been the designated exclusive collective-bargaining representative pursuant to Section 9(a) of the Act of the employees in the unit and since then Local 361 has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement which is effective from August 24, 1990, through June 30, 1995.

On April 1, 1991, Local 361 merged with the Union. At all times since between April 1, 1991, the Union has been the exclusive collective-bargaining representative of the employees in the unit pursuant to Section 9(a) of the Act. Respondent

[1] The name of the Charging Party has been changed to reflect the new official name of the International Union.

[2] As noted above, the Respondent concedes that it did not intend its letter to constitute an answer. We further find the Respondent's statement that it does not have sufficient funds with which to conciliate or defend against the complaint does not constitute good cause for failure to respond. See *Caltrans Systems*, 245 NLRB 708, 709 (1979).

and the Union are now the parties to the collective-bargaining agreement described above.

B. *The Unfair Labor Practices*

1. Failure to continue in full force and effect its collective-bargaining agreement with the Union

The Respondent has failed and refused to continue in full force and effect its collective-bargaining agreement with the Union by engaging in the following conduct:

(a) Since on or about August 4, 1991, the Respondent ceased union pension contributions;
(b) Since on or about August 4, 1991, the Respondent ceased union health and welfare contributions;
(c) Since on or about August 4, 1991, the Respondent failed to remit to Teamsters Federal Credit Union savings deductions from payroll checks;
(d) Since on or about September 1, 1991, the Respondent failed to remit the union dues of employees.

These subjects relate to wages, hours, and other terms and conditions of employment of the employees in the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without the Union's consent.

2. Failure to bargain regarding effects of the closedown of operations

About September 23, 1991, the Union requested that the Respondent bargain collectively about the effects of the closedown of operations of the Respondent's Findlay, Ohio facility. Since about September 23, 1991, the Respondent has failed and refused to bargain collectively about the effects of this closedown. This subject relates to wages, hours, and other terms and conditions of employment of the employees in the unit and are mandatory subjects for the purposes of collective bargaining.

3. Failure to process grievance

Since about September 25, 1991, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit by failing to acknowledge or process the Union's September 25, 1991 grievance relative to the effects of the closedown of the Respondent's Findlay, Ohio facility as well as the Respondent's failure to continue in full force and effect all the terms and conditions of the contract as set forth in part II,B,1 above.

The Respondent's failure to continue in full force and effect all the terms and conditions of the contract, its failure to bargain about the effects of its closedown, and its failure to process the grievance, all as set forth above, constitute unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 8(d) of the Act.

CONCLUSIONS OF LAW

1. By its failure and refusal to continue in full force and effect all the terms of its collective-bargaining agreement with the Union by ceasing union pension contributions, ceasing union health and welfare contributions, failure to remit to Teamsters Federal Credit Union savings deductions from payroll checks, and failure to remit the union dues of employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and (5) and 8(d) and Section 2(6) and (7) of the Act.

2. By its failure and refusal to bargain with the Union about the effects of the closedown of operations of its Findlay, Ohio facility, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and (5) and 8(d) and Section 2(6) and (7) of the Act.

3. By its failure and refusal to acknowledge or process the Union's September 25, 1991 grievance relative to the effects of the closedown of the Respondent's Findlay, Ohio facility as well as the Respondent's failure to continue in full force and effect all the terms and conditions of the contract, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and (5) and 8(d) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to make contractually required payments for union pension contributions and union health and welfare contributions, and by failing to remit to Teamsters Federal Credit Union savings deductions from payroll checks, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in

accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

We shall further order the Respondent to remit to the Union deducted union dues and fees owed for those unit employees who had authorized the Respondent to deduct and remit them to the Union pursuant to the parties' collective-bargaining agreement, with interest as computed under *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent shall also be ordered to process all pending grievances filed by the Union.

Finally, to remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of the closedown of its Findlay, Ohio facility, we shall order it to bargain with the Union, on request, concerning the effects of that decision. Because of the Respondent's unlawful failure to bargain with the Union about the effects of the decision to close down its Findlay, Ohio operations, the bargaining unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to require not only that the Respondent bargain with the Union, on request, about the effects of the closure, but we shall also accompany our order with a limited backpay requirement designed both to make the employees whole for losses as a result of the Respondent's failure to bargain, and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by requiring the Respondent to pay backpay to unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

The Respondent shall pay unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) The date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the plant closure on unit employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within the 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith.

In no event shall the sum paid to any of these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than the amount these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Interest on all sums shall be paid in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1773 (1987).

Finally, in view of the Respondent's closure of its facility, we shall order the Respondent to mail copies of the notice to all unit employees.

ORDER

The National Labor Relations Board orders that the Respondent, Valley Fresh Dairy Company, Inc., Findlay, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to continue in full force and effect all the terms of its collective-bargaining agreement with the Union by ceasing union pension contributions, ceasing union health and welfare contributions, failing to remit to Teamsters Federal Credit Union savings deductions from payroll checks, and failing to remit the union dues of employees.

(b) Failing and refusing to bargain with the Union about the effects of the closedown of operations of its Findlay, Ohio facility.

(c) Failing and refusing to acknowledge or process the Union's September 25, 1991 grievance relative to the effects of the closedown of the Respondent's Findlay, Ohio facility and relative as well to the Respondent's failure to continue in full force and effect all the terms and conditions of the contract.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Continue in full force and effect all the terms and conditions of the collective-bargaining agreement with the exclusive representative of the employees in the following appropriate unit:

> All employees of the Employer as set forth in Article I, Section I of the collective bargaining agreement, including "Plant Employees" and "Driver Sales Employees" as specified in Article VIII of the collective bargaining agreement, excluding all supervisors as defined in the Act.

(b) Make all payments required pursuant to the collective-bargaining agreement including union pension contributions, union health and welfare contributions, and remit to Teamsters Federal Credit Union savings deductions from payroll checks.

(c) Remit deducted union dues to the Union as required by the collective-bargaining agreement, plus interest, in the manner set forth in the remedy section of this decision.

(d) On request, process grievances filed by the Union.

(e) On request, bargain collectively with the Union with respect to the closedown of operations of the Respondent's Findlay, Ohio facility, and reduce to writing any agreement reached as a result of such bargaining.

(f) Pay the employees in the unit their normal wages for the period set forth in the remedy section of this decision.

(g) Make whole its unit employees for any losses attributable to its failure to make all payments required pursuant to the collective-bargaining agreement, including union pension contributions, union health and welfare contributions, and remission to the Teamsters Federal Credit Union savings deductions from payroll checks, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), and *Ogle Protection Service*, 183 NLRB 682 (1970), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(h) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(i) Post at its facility in Findlay, Ohio, and mail to its bargaining unit employees, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(j) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to continue in full force and effect our collective-bargaining agreement with Teamsters, Chauffeurs, Warehousemen & Helpers Union Local 20, a/w International Brotherhood of Teamsters, AFL–CIO as the exclusive representative of our employees in the following unit:

> All employees of the Employer as set forth in Article I, Section I of the collective bargaining agreement, including "Plant Employees" and "Driver Sales Employees' as specified in Article VIII of the collective bargaining agreement, excluding all supervisors as defined in the Act.

WE WILL NOT refuse to honor our collective-bargaining agreement by failing to make union pension contributions, failing to make union health and welfare contributions, failing to remit to the Teamsters Federal Credit Union savings deductions from payroll checks, and failing to remit the union dues of employees.

WE WILL NOT fail and refuse to bargain with the Union about the effects on bargaining unit employ-

ees of our closedown of operations at our Findlay, Ohio facility.

WE WILL NOT fail and refuse to acknowledge and process any grievances filed by the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor our collective-bargaining agreement with the Union by making union pension contributions, making union health and welfare contributions, remitting to the Teamsters Federal Credit Union savings deductions from payroll checks and remitting the union dues of employees, and WE WILL make our employees whole for any loss of benefits or other expenses suffered as a result of our failure to make these contributions and remissions.

WE WILL pay our unit employees who were employed at the Findlay, Ohio facility at the time of the closedown their normal wages for a period required by the decision of the National Labor Relations Board.

WE WILL, on request, meet and bargain with the Union about the effects on bargaining unit employees of our closedown of operations at our Findlay, Ohio facility.

WE WILL acknowledge and process any grievances filed by the Union.

VALLEY FRESH DAIRY COMPANY, INC.